Anticipated acquisition by esure Group plc of the remaining 50% of Gocompare.com Holdings Limited's share capital

ME/6495-14

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 23 February 2015. Full text of the decision published on 2 March 2015.

Please note that [✄] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

SUMMARY

1. esure Group plc (**esure**) has agreed to acquire the remaining 50% of Gocompare.com Holdings Limited's share capital that it does not already own (**Gocompare**) (the **Merger**). esure and Gocompare are together referred to as the **Parties**.

2. The Competition and Markets Authority (**CMA**) considers that the Parties will cease to be distinct as a result of the Merger, that the turnover test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

3. esure and Gocompare operate in different markets within the insurance industry and there are no horizontal overlaps between their activities. While esure provides insurance policies, Gocompare is a price comparison website (**PCW**) and provides customers with insurance quotes, earning commissions from insurance providers when customers purchase policies from providers' websites as a result of its introduction.

4. The CMA has assessed the impact of the Merger on the national upstream markets for the supply of private motor insurance (**PMI**) and home insurance; and the national downstream markets for PCW services related to the distribution of PMI and home insurance.

5. The CMA identified two potential theories of harm:

(a) That esure might have the ability and the incentive to foreclose rival insurers by de-listing them from, or affecting their ranking on, Gocompare (this theory is referred to as ‘customer foreclosure’).

(b) That esure might have the ability and the incentive to use confidential information on its competitors’ pricing models obtained through Gocompare either to increase its margins or to gain a competitive advantage, weakening competition between insurers (this theory is referred to as ‘information sharing’).

6. The Parties are subject to contractual and regulatory obligations, and their behaviour in the areas described above is monitored by competitors, which the CMA believes will counter the Parties’ ability to engage in the strategies outlined. In addition, the CMA considers that the Parties’ incentive to engage in these strategies will be limited, given that the evidence indicates that the risks they would present to Gocompare significantly outweigh the benefits they might achieve for esure.

7. The CMA considers that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of vertical effects.

8. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

9. esure is a UK insurance business which sells predominantly PMI and home insurance. esure’s gross written premium (**GWP**) in the year ending 31 December 2013 was £536 million.[1]

10. Gocompare is a UK PCW which offers quotes for various types of insurance, including PMI and home insurance. The UK turnover of Gocompare in the year ended 31 December 2013 was £110 million.

[1] In respect of insurance undertakings, the applicable turnover is the value of gross premiums (see paragraph 12 of the Schedule to the Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003).

Transaction

11. esure and Gocompare entered into a Share Purchase Agreement on 8 December 2014 for the acquisition of the remaining 50% of Gocompare, which esure does not currently own, for a consideration of £95 million.

Jurisdiction

12. esure currently owns 50% of Gocompare and told the CMA that it has de facto control, or at least material influence, over Gocompare's business. The CMA notes that the Merger will make esure the sole owner of Gocompare and hence give it a controlling interest. Pursuant to section 26(4) of the Act, the CMA may consider a new relevant merger situation to have been created if an acquiring firm that is already able to exert one level of control acquires a higher level of control in the target firm.[2] The CMA therefore considers that, as a result of the Merger, the enterprises of esure and Gocompare will cease to be distinct.

13. The UK turnover of Gocompare exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.

14. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

15. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 6 January 2015 and the statutory 40 working day deadline for a decision is therefore 2 March 2015.

16. The Parties informed the CMA that the Merger was not subject to review by any other competition authority.

Counterfactual

17. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is

[2] Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2), January 2014, paragraphs 4.31-32.

a realistic prospect of a counterfactual that is more competitive than these conditions.[3]

18. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA considers the prevailing conditions of competition to be the relevant counterfactual.

Background

19. As noted above, esure currently owns 50% of Gocompare and told the CMA that it has de facto control, or at least material influence, over Gocompare's business. The CMA notes that there are other insurers or brokers which own PCWs, ie Admiral owns Confused.com, and BGL Group owns Compare the Market.com. Of the four largest PCWs which offer PMI, only Moneysupermarket.com is not controlled by a PMI provider.

20. The CMA published its final report on the PMI market investigation (the **PMI Market Investigation**) on 24 September 2014,[4] which considered as a theory of harm the interaction between insurance providers and PCWs where there is common ownership. This investigation found no evidence that vertically-integrated PCWs were engaging in strategic de-listing (or similar behaviour) or information-sharing to benefit their integrated insurance business.[5]

Frame of reference

21. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.[6]

22. esure and Gocompare operate in different markets within the insurance industry and there are no horizontal overlaps between their activities. While

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[3] *Merger assessment guidelines* (OFT1254/CC2), September 2010, paragraph 4.3.5 et seq. The Merger assessment guidelines have been adopted by the CMA (see Mergers: Guidance on the CMA's jurisdiction and procedure, Annex D).
[4] Private motor insurance market investigation – Final report, 24 September 2014.
[5] See Appendix 8, Annex J: Effect of PCW ownership structure on competition between PMI providers of the Private motor insurance market investigation – Final report.
[6] Merger assessment guidelines, paragraph 5.2.2.

esure provides insurance policies, Gocompare provides customers with insurance quotes, earning commissions from insurance providers when customers purchase policies from providers' websites as a result of its introduction.

Product scope

23. esure supplies four types of insurance (PMI, home, pet and travel), which are all products which are offered by Gocompare, among others.

24. The volume and value of esure's sales of pet and travel insurance is relatively small,[7] which, according to esure, is in part because it acts only as a distributor/reseller for these policies, earning a smaller margin than on products it sells directly. For these reasons, the CMA considers that there is not a realistic prospect that esure will have the ability or incentive to engage in a vertical foreclosure strategy relating to pet and travel insurance and does not discuss them further.

Separation of PMI and home insurance markets

25. In previous decisions,[8] one of the CMA's predecessors, the Office of Fair Trading (**OFT**), did not conclude as to whether, within non-life insurance, home insurance constituted a separate market to PMI. The Parties submitted that the CMA did not need to reach a conclusion on this because, even if these were separate markets, no competition concerns would arise in this case.

26. Given the lack of demand-side substitutability between PMI and home insurance and the fact that not all insurers are present in both markets, the CMA has, in this case, treated, on a cautious basis, home insurance and PMI as separate markets within the non-life insurance segment. However, it was not necessary for the CMA to reach a conclusion in this respect, as no competition concerns would arise even if home insurance and PMI were considered together.

[7] The total value of the pet insurance market by GWP was estimated at around £800 million in 2013 – the policies for which esure acted as introducer amounted to GWP of around [✂] in 2013, giving esure a share of less than [0–10]%, while the total value of the travel insurance market by GWP was estimated at around £779.3 million in 2013 – the policies for which esure acted as introducer amounted to GWP of around [✂] in 2013, giving esure a share of less than [0–10]% (source of market size estimates: Datamonitor and Timetrec report, 2013).
[8] See ME/2727/06 – Catlin/Wellington (2006); CE/2611/03 – Pool Reinsurance Company Ltd. (2004), paragraph 14; and ME/1717/05 – CGU/Gresham (2005).

Further segmentation of PMI and home insurance markets

27. The CMA also considered whether the PMI and home insurance markets should be segmented into narrower markets in relation to, for example, the level of risk concerned. The recent PMI Market Investigation concluded that it was not necessary for the competitiveness analysis in that investigation for it to segment insurance products further. The CMA has no basis to depart from that view in this case. However, it was not necessary for the CMA to reach a conclusion in this respect, as no competition concerns would arise if specific separate segments of home insurance and PMI were considered.

Downstream PCW services in relation to PMI and home insurance

28. The Parties submitted that end customers can purchase PMI either directly from insurers or via intermediaries such as PCWs, brokers and affinity brand partners. The sale may be made offline (by phone or face-to-face) or online, depending on the distribution channel in question, or may use a combination of these channels.

29. The CMA concluded in the PMI Market Investigation that PCWs in the UK form a distinct market from other distribution channels on the basis that, among other factors, there are limited substitutes on the demand-side for consumers (noting that it would be more difficult and time-consuming for consumers to search across the individual websites of providers). The CMA has no basis to depart from that view in this case and has therefore focussed its assessment on PCWs.

Geographic scope

30. The Parties submitted that the appropriate geographic scope for non-life insurance products has generally been considered to be national in scope due to differences in regulatory requirements, fiscal constraints and distribution channels.[9]

31. The CMA has not received any evidence in this case to depart from a national geographic scope.

[9] See OFT decisions ME/1717/05 CGU/Gresham (2005); ME/1987/05 QBE/MBP (2005), paragraph 16; CE/2611/03 Pool Reinsurance Company Ltd. (2004), paragraphs 29 to 31. This is also consistent with the European Commission's decisional practice: COMP/M.6053CVC/Apollo/Brit Insurance (2011), paragraph 17; COMP/M.4284 AXA/Winterthur (2006), paragraphs 17 to 20 (with the exception of marine and aerospace risk insurance which were examined on at least an EEA-wide basis).

Conclusion on frame of reference

32. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:

- The national upstream market for the supply of home insurance.
- The national upstream market for the supply of PMI.
- The national downstream market for PCW services related to the distribution of home insurance.
- The national downstream market for PCW services related to the distribution of PMI.

Competitive assessment

Horizontal unilateral effects

33. As noted above (paragraph 22), esure and Gocompare operate in different markets within the insurance industry and there are no horizontal overlaps between their activities. The CMA considers therefore that the Merger does not give rise to competition concerns in relation to horizontal unilateral effects.

Vertical effects

34. Vertical effects may arise when a merger involves firms at different levels of the supply chain. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances they can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anti-competitive where it results in a substantial lessening of competition in the foreclosed market(s), not merely where it disadvantages one or more competitors.[10]

35. In the present case, the CMA has considered the following vertical theories of harm:

- Customer foreclosure through de-listing insurers from or affecting their ranking on Gocompare ('customer foreclosure').

[10] In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or the substantial competitive weakening of a rival.

- esure using confidential information on its competitors' pricing models obtained through Gocompare in order to gain a competitive advantage, weakening competition between insurers ('information sharing').

36. The CMA's approach to assessing vertical theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and, if the ability and incentive are present, (c) the overall effect of the strategy on competition.[11]

Ability to engage in either strategy – the Parties' legal obligations

37. The Parties submitted that the merged entity will operate in the presence of a number of legal and regulatory obligations which would constrain its ability to engage in either of the strategies highlighted.

38. Gocompare is authorised by the Financial Conduct Authority (FCA) in respect of insurance mediation activities in relation to non-investment insurance contracts. The Parties submitted that a customer foreclosure strategy or information sharing strategy would be in breach of several of the FCA's principles for business. In particular, it would put Gocompare in breach of its obligations to act with integrity (Principle 1), to treat customers fairly (Principle 6), to observe proper standards of market conduct and to manage conflicts of interests (Principles 5 and 8), and to take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement (Principle 9). A breach of Principle 6 can give rise to FCA enforcement actions and the imposition of disciplinary sanctions, including fines. A breach of the FCA Principles may also lead the FCA to call into question whether a firm is still fit and proper (in accordance with the threshold conditions for authorisation).

39. The FCA told the CMA that it will follow its normal procedures to assess the issues associated with the proposed merger.

40. The Consumer Protection from Unfair Trading Regulations 2008 requires that the Parties act fairly and honestly towards customers and must not give customers misleading information.

41. In addition to these regulatory constraints on the Parties, the Parties submitted that in Gocompare's contracts[12] with other insurers and brokers it is

[11] *Merger assessment guidelines,* paragraph 5.6.6.
[12] Esure provided an example of its own contract with Gocompare. [✂].

typical for Gocompare to be [✂]. These contractual provisions support the regulatory provisions [✂].

42. The CMA also notes that other insurers and brokers have an incentive to monitor closely their sales on Gocompare and can do so through their own data and through aggregated data sources. Although there are some limitations to this analysis, the scrutiny of other insurance providers limits the ability of the Parties to engage undetected in either of the highlighted strategies.[13] All third party insurers that responded commented that they monitored their performance on PCWs, through market intelligence provided by the PCWs and through checking the individual websites.

43. Although the Parties' ability to engage in a customer foreclosure or information sharing strategy is therefore limited, the CMA also considered specific evidence regarding the Parties' ability to engage in each of these strategies as well as evidence regarding the Parties' incentive to do so.

Customer foreclosure

44. Customer foreclosure in this case could be achieved through de-listing a rival insurer from Gocompare or adversely affecting a rival's ranking on Gocompare to place it at a competitive disadvantage to esure.

45. esure might engage in this activity if it thought that the benefits arising from additional sales upstream for esure outweighed the costs arising from the lost sales downstream for Gocompare.

Views of the Parties

46. The Parties submitted that the merged entity would have neither the ability nor the incentive to foreclose its PMI and home insurance rivals by excluding them from the Gocompare platform. In particular, the Parties submitted that Gocompare's business model was based on providing a broad range of PMI and home insurance products to its customers and maintaining a reputation as an unbiased PCW platform, both of which would be undermined by a customer foreclosure strategy. The Parties provided details of Gocompare's customer promise which stated that it would provide unbiased results, not affected by affiliation with any company. The Parties submitted that if it became known that it had engaged in customer foreclosure, Gocompare would quickly lose consumer confidence and traffic. The Parties said that, for this reason, customer foreclosure was inherently implausible.

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[13] See also from paragraph 64 below.

47. The Parties submitted that an incentive to foreclose would be affected by two factors:

- A loss of profit in the PCW market as a result of certain customers switching to other PCWs (or other distribution channels) following the de-listing of some insurers on Gocompare.

- A gain in profits in the insurance market as a result of certain customers of Gocompare buying insurance from esure instead of de-listed insurers.

48. The Parties submitted that such a strategy was unlikely to be profitable because the majority of Gocompare's customers searched in parallel on other PCWs (ie they 'multi-homed') and therefore were likely to respond to this strategy by moving to a different PCW or distribution channel. Moreover, because esure had a relatively small market share in the insurance market, it was unlikely to attract a large share of the customers of de-listed insurers.

49. To support these views, the Parties submitted an analysis of the profit impact of such a foreclosure strategy commissioned from RBB Economics. RBB's analysis considered two scenarios:

- Gocompare forecloses esure's largest rival.

- Gocompare forecloses esure's four largest rivals.

50. The RBB analysis assumes that, of all the Gocompare customers who would have chosen a de-listed insurer, those who multi-home (67.5% of the total)[14] would all divert to other PCWs or other distribution channels,[15] and all those who single-home (the remaining 32.5%) would remain on Gocompare and divert to other insurers in accordance with current market shares. esure submitted that it has a relatively small share of the PMI and home insurance markets, at [0–10]% and [0–10]% respectively ranked by GWP.[16]

51. RBB found that the merged entity would face reduced profits in both scenarios, with a bigger reduction in profits for the second scenario. RBB also found that anti-competitive effects were highly unlikely, with the market shares of the foreclosed rival insurers likely to fall by very small amounts.

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[14] PMI Market Investigation, Final report, para. 8.12 and 8.14.
[15] The Parties noted the findings of the PMI Market Investigation that, on average, consumers use 2.2 PCWs and that the level of multi-homing may be as high as 67%. The Parties also submit that multi-homing may increase when the ban on wide most-favoured-nation clauses in contracts between providers of PMI and price comparison websites (ie PCWs not allowing insurers that list on their sites to list a lower price anywhere else) comes into force.
[16] Source: S&P, Admiral Report and Accounts 2013, cited in Ernst & Young: UK motor insurance results seminar: tipping point? (17 June 2014), and S&P, cited in Ernest & Young: UK home insurance results seminar: Time to act (23 October 2014).

52. The Parties also noted that Gocompare is one of four main PCWs, the other three being Compare the Market, Confused.com and Moneysupermarket.com, with a tail of other smaller PCWs, including Quidco, Google, Tiger, Moneysavingexpert and Quotezone. The Parties provided estimates of the market shares of the four largest PCW providers, as shown in Table 1 below.

Table 1 – Market shares of the four largest PCWs[17]

	PCW market share (PMI)	PCW market share (home)
Compare the Market	[30–40]%	[40–50] %
Moneysupermarket	[15–25]%	[20–30]%
Gocompare	[15–25]%	[10–20]%
Confused	[10–20]%	[5–15]%
Other	[0–10]%	[0–10]%
Total May not total 100% due to rounding	100%	100%

Source: ebenchmarkers, [✄]

53. The Parties also noted that 58% of home insurance sales and 35 to 45% of PMI sales are made using channels other than PCWs.[18] They submitted that this demonstrated that insurers were not reliant on PCWs, so de-listing an insurer from one PCW would not foreclose it from the marketplace.

Third-party views

54. The CMA contacted 19 insurers and four PCWs for their views on the Merger. Six insurers and two PCWs replied. With regard to the customer foreclosure theory of harm, only one insurer expressed concerns, noting that 'In principle a PCW-integrated insurer also has the opportunity to misuse its rivals' data by not enabling its rivals' quotes to appear in respect of all the categories of business they have stated they wish to quote for. This is very difficult for a provider to evidence'.

Conclusion on customer foreclosure

Ability

55. The CMA considers that regulations and contractual provisions will act, to some degree, to limit the ability of the merged entity to foreclose rival insurers

[17] Market shares are estimates and have been calculated by taking an average of the shares over the period from September 2013 to September 2014 as reported.
[18] PMI Market Investigation, Final report, paragraph 8.3.

on Gocompare. The effect of these provisions is enhanced through insurers' monitoring of sales behaviour through different channels (see paragraphs 35 to 40).

Incentive

56. In the CMA's view, the RBB analysis submitted by the Parties which sought to estimate their incentive to engage in customer foreclosure has some limitations. The CMA has therefore considered how this affects the weight it can place on this analysis.

    (a) RBB's scenarios reflect a relatively 'crude' foreclosure strategy where Gocompare would simply delist the largest insurer(s) in the market. In principle it might be possible for the merged entity to apply a more 'targeted' foreclosure strategy by seeking to delist esure's *closest* rivals, rather than simply the largest. Such a strategy would result in larger gains for the merged entity (due to a higher diversion from the de-listed insurers). However, the CMA notes that the analysis submitted by the parties does include some sensitivities indicating that even with high diversion ratios the strategy would be unprofitable.

    (b) The assumption that all multi-homing customers would effectively divert to other PCWs or distribution channels is untested. However, the CMA notes that the analysis includes sensitivities with respect to this parameter which indicate that the foreclosure strategy would not be profitable unless the diversion to other PCWs fell below 20%, which the CMA considers to be unrealistic, given the finding of the PMI Market Investigation that an estimated 67.5% of consumers who use PCWs to shop for PMI products multi-home.[19]

    The CMA therefore concluded that, overall, the essential result of the RBB analysis was robust.

57. Esure submitted that in the upstream market for the provision of insurance products, it had relatively small shares of the PMI and home insurance markets, namely [0–10]% and [0–10]% respectively ranked by its GWP for the PMI and home insurance markets. While in the downstream market it is estimated that, of PMI and home insurance sales made through PCWs, Gocompare has shares of [15–25]% and [10–20]%respectively for the PMI and home insurance markets.[20]

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[19] PMI Market Investigation, Final report, para. 8.12 and 8.14.
[20] See Table 1 above.

58. On the basis of the available evidence, the CMA considers that the merged entity will have little incentive to de-list rival insurers, or to engage in similar behaviour. The key factors which act to limit such incentive are customers' propensity to multi-home (which is expected to translate into relatively high diversion from Gocompare to other PCWs), and effective competition in the upstream insurance market (which is expected to translate into relatively low diversion from de-listed insurers to esure).

Conclusion

59. Overall, based on the evidence set out above and given the impediments to both the ability and the incentive, the CMA considers that the Merger will not give rise to a realistic prospect of a substantial lessening of competition in relation to the Parties engaging in customer foreclosure.

Information sharing

60. The second theory of harm relates to the merged entity using information on other insurers' pricing models gained through Gocompare either to increase its margins or to gain a competitive advantage, weakening competition between insurers.

61. For example, where esure might otherwise have competed strongly to be the cheapest provider, it might be able to use information about others' prices to increase its prices to the maximum possible while still being the cheapest. Alternatively, esure might use competitors' pricing information to back-estimate their pricing algorithms, enabling esure either to target its business better or to reduce its costs. In either of these scenarios, the effect would be a softening of competition between insurers.

Views of the Parties

62. The Parties submitted that, in theory, the merged entity could use confidential information gained via Gocompare from esure's competitors in a way that would disadvantage rival insurers. However, the Parties noted that the PMI Market Investigation found no evidence of such practices despite the fact that several PCWs were owned by insurers. The Parties added that this investigation had recognised that there was a risk of insurers de-listing if they thought their prices were being quoted unfairly.[21]

[21] PMI Market Investigation, Final report, Appendix 8, Annex J, paragraph 14.

Ability

63. The Parties submitted that the legal and regulatory framework in which they operated would prevent them from sharing pricing information internally. In addition, the Parties submitted that manipulating prices based on confidential information would require a 'continuous flow of quoting information within the structure of the integrated PCW/PMI provider'.[22] In the course of the CMA's PMI Market investigation, insurers with an interest in a PCW told the CMA that they were unaware of any software (or other mechanism) which would allow a PMI provider to analyse rivals' prices in real time, and the CMA found no evidence that such software currently exists or was being developed.

Incentive

64. The Parties submitted that this strategy would be detected by rivals, with the effect of undermining immediately Gocompare's reputation with consumers as an independent PCW. The Parties noted that the PMI Market Investigation had stated that the CMA 'expected [non-integrated PMI providers] would monitor closely their sales performance on each PCW in order to identify any unexpected changes (eg a decrease in sales volume)'[23]

65. The Parties put forward several methods by which rivals could detect this strategy, for example by:

- monitoring quote and conversion rates on each PCW to compare volumes quoted and volumes sold relative to other PCWs and the market as a whole;
- commissioning or subscribing to external data sources, such as Consumer Intelligence or e-Benchmarkers, which can provide individualised reports for insurers showing relative performance on PCWs; and
- obtaining information from the PCW portals [✂].

66. The Parties submitted that esure closely monitored its quotes and conversion performance on PCWs and expected that other insurers did the same. The Parties said that, to date, esure had found no evidence of quote manipulation. The Parties noted that the PMI Market Investigation found 'no indication that

[22] Idem, paragraph 6.
[23] Idem, paragraph 25.

the integration of some PCWs with PMI providers gave rise either to the undercutting of quotes or the manipulation of quotes'.[24]

Third party views

67. Of the six insurers which provided the CMA with their views on the Merger, five expressed some degree of concern relating to the sharing of confidential information.

68. Three respondents stated that they had no concerns with the Merger as long as there were safeguards in place to prevent the sharing of confidential information between esure and Gocompare. One of these respondents said that although the CMA had found in its PMI Market Investigation that there was no evidence of the sharing of confidential information, it had reason to think this had changed.

69. Two respondents were more concerned by the Merger and suggested various ways in which the sharing of confidential information might cause harm, ie through:

- non-anonymised sharing of market intelligence;
- visibility of competitor analysis at point of quote;
- accessing detailed customer data which could be used for marketing purposes; and
- not enabling rival insurers' quotes to appear in respect of all categories of insurance.

70. Of the two PCWs which provided the CMA with their views on the Merger, neither raised concerns concerning the sharing of confidential information. One PCW noted that the merged entity would need a conflict of interest policy with clear separation of systems and duties. It considered that transparency for insurers was paramount and that any manipulation of quotes would be detrimental to the merged entity.

71. Neither of these two PCWs had any evidence to indicate that sharing of confidential information occurred. However, they submitted that a PCW owned by an insurer might have the ability to do it. For instance, the insurer could track rival quotes in a way that rivals would not be able to replicate,

[24] Idem, paragraph 20.

looking at prices on a quote by quote basis and inferring its competitors' pricing strategies. The respondents suggested that:

- there are no legal safeguards that they are aware of;
- this could theoretically be done in real time; and
- it should be technically feasible.

72. These third parties submitted that contractual obligations not to share confidential information might be effective but that it was difficult to say how effective this constraint would be. One difficulty might be defining 'confidential'. For example, quote data might not be confidential as consumers can access it, as can other insurers if they take the time to enter quotes. Third parties recognised that esure's advantage was principally one of time and cost as other insurers could also gain access to aggregated pricing data, eg through consumer intelligence, e-benchmarkers or from the PCWs themselves, though in these cases the data would be anonymised, and might not be available as quickly. Third parties suggested that a solution to any concerns over the sharing of confidential information would be the creation of effective 'Chinese walls'.

Conclusion on information sharing

Ability

73. As noted above, third parties were of the view that some form of information sharing which might benefit esure should be technically feasible. The CMA, on a cautious basis, therefore considers that it cannot rely on technological factors to conclude that the merged entity will be unable to engage in information sharing.

74. The CMA considers that regulations and contractual provisions will act, to some degree, to limit the ability of the merged entity to share confidential information between Gocompare and esure. The effect of these provisions is enhanced through insurers' monitoring of sales behaviour through different channels (see paragraphs 37 to 42).

Incentive

75. The CMA considers that while the Merger may enable esure to access competing insurers' confidential information more rapidly and with greater granularity through Gocompare and esure may benefit from this, the magnitude of this potential advantage is unclear given that some aggregated

pricing information is already available to insurers through various channels.[25] Therefore, it is unclear whether this would significantly alter esure's competitive position in the market.

76. In the PMI Market Investigation, the CMA considered whether vertically integrated insurers (ie those owning a PCW) could use confidential information obtained through the services offered by their PCWs to undercut rival PMI providers or manipulate quotes.[26]

77. The CMA noted that there was no evidence of such exchanges having taken place at the time of the CMA's report, which was very recent (September 2014), and that vertically integrated PCWs would be constrained from pursuing such strategies by the presence of other PMI providers in the market who would likely delist if they considered their prices were not being quoted fairly.

78. In particular, the CMA considered esure's ownership of Gocompare[27] in the PMI Market Investigation and noted that there was 'no indication that the integration of some PCWs with PMI providers gave rise either to the undercutting of quotes or the manipulation of quotes.'[28]

In addition, the CMA found no evidence that such practices took place even when PCWs were 100% owned by an insurer, as was the case for Confused.[29]

79. Moreover, the CMA considers that pursuing this strategy would involve significant risks for esure and Gocompare, which would be both regulatory (see paragraphs 38 to 39 above) and reputational. In particular, as with the foreclosure strategy, if Gocompare were to lose its reputation as an independent PCW it runs a significant risk of rapidly losing customers and profitability. The CMA notes in this respect that Gocompare faces competition from three PCWs that have a similar or larger share (see Table 1 above) and that the majority of Gocompare's customers already multi-home, ie use other PCWs alongside Gocompare (see paragraph 50 above).

80. The CMA considers that, although detection by another insurer or a regulator of the merged entity engaging in information sharing may be difficult, the probability of detection is not negligible. Competitors of esure told the CMA

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[25] See paragraphs 64 to 66.
[26] PMI Market Investigation, Final report, Appendix 8, Annex J.
[27] esure currently owns a 50% stake in Gocompare, and has had a stake in Gocompare since 2010.
[28] PMI Market Investigation, Final report, Appendix 8, Annex J, paragraph 20.
[29] For example, Admiral told the OFT in the course of the PMI Market Investigation that 'having Confused granting Admiral access to the real time data of its PMI rivals would be 'commercial suicide' for Confused as it needed to offer the broadest range of coverage in terms of PMI providers and such behaviour would make rival PMI providers run away' (idem, paragraph 8).

that they monitored performance, and that it may be possible for a vigilant insurer to spot whether they were being systematically undercut.

81. On the basis of the available evidence set out above, the CMA considers that the incentive to protect Gocompare's independent reputation, and to maintain the merged entity's regulatory standing, will outweigh the potential incentive to engage in information sharing (notwithstanding a potentially low probability of detection) such that the Merger will not give rise to a realistic prospect of a substantial lessening of competition through this information sharing strategy.

Conclusion

82. Overall, based on the evidence set out above and given the impediments to both the ability and the incentive, the CMA considers that the Merger will not give rise to a realistic prospect of a substantial lessening of competition in relation to the Parties engaging in information sharing between Gocompare and esure.

Conclusion on vertical effects

83. For the reasons set out above, the CMA has found that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of vertical effects in relation to either the national upstream markets for the supply of PMI and home insurance; or the national downstream markets for PCW services related to the distribution of PMI and home insurance.

Barriers to entry and expansion

84. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial lessening of competition. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

85. Third party comments have been summarised and taken into account where appropriate in the competitive assessment above.

Decision

86. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

87. The Merger will therefore **not be referred** under section 33(1) of the Act.

Andrew Wright
Director
Competition and Markets Authority
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